

April 10, 2000

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: Petition for Waiver of Eligibility Requirements for the
Personal Communications Services (PCS) Frequency
Blocks C and F Auction to Begin July 26, 2000; DA 00-191

Dear Ms. Salas:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) opposes elimination of designated entity eligibility requirements that the Federal Communications Commission (Commission) established for the PCS C and F Blocks.¹ No party has presented any reason for the Commission to abandon its well-reasoned and long-standing C-Block licensing scheme. In fact, sound public policy, as well as Commission precedent, compel the continuation of these eligibility restrictions, which are designed to ensure that designated entities (including small businesses and women- and minority-owned businesses) have an opportunity to compete for the provision of wireless services. Therefore, for the upcoming C and F Block re-auction, the Commission should retain restrictions limiting eligibility for those licenses to designated entities, for all licenses in all markets.

SBC Communications Inc. (SBC) has presented a “compromise” position, according to which the Commission would permit non-designated entity bidding eligibility for any market with a population of 700,000 or more persons.² For all other markets, the Commission would waive its rules limiting non-designated entity investment in designated entity companies.³ US WEST Wireless, LLC and Sprint Spectrum dba Sprint PCS have suggested dividing the 30 MHz C-Block licenses into three 10 MHz licenses (and permitting large companies to bid on the licenses), arguing that the resulting increase in total licenses will increase small business opportunity to obtain spectrum licenses.⁴

These positions are not compromises at all. SBC’s new position would relegate small businesses to only those markets deemed undesirable to large businesses, just as surely as SBC’s original proposal to permit non-designated entity bidding in all markets. Under SBC’s “compromise”, a large business could bid on its own for any market above

¹ See *Comments of Advocacy*, dated February 22, 2000 and *Reply Comments of Advocacy*, dated March 1, 2000.

² See *Ex Parte Presentation; C&F Block Auction; DA 00-191 & DA 00-318*, dated March 21, 2000.

³ *Id.*

⁴ See *Petition for Reconsideration (Expedited Action Requested)*, WT Docket No. 97-82, dated April 4, 2000.

700,000 persons, and could obtain a controlling interest in a designated entity applicant for any smaller market the large company might desire. This is equivalent to permitting non-designated entities to bid for any market or license.

Similarly, increasing the number of licenses as a way of increasing small business opportunity is illusory. Any large business interested in any 10 MHz license in any market will successfully bid for that license against any small business. Therefore, designated entities could obtain only those licenses desirable to no large business.

The Commission recognizes that small businesses cannot prevail at auction against large companies.⁵ The Commission found that to fulfill Congress's mandate of increasing competition, it must assure designated entities have access to PCS spectrum.⁶ The Commission saw that bidding credits would be insufficient to compensate for the large sums of money that PCS licenses would likely command.⁷ Therefore, the Commission set aside PCS spectrum for exclusive access by designated entities.⁸

Experience has proved the Commission right. PCS spectrum has produced astonishing revenue for the federal treasury. And this spectrum continues to hold value and attract big money.⁹ And in the course of a prior re-auction of C-Block PCS spectrum, the Commission reiterated (not for the first time) that designated entities must have exclusive access to the C- and F-Blocks, if they are to have any opportunity to compete to provide PCS services.¹⁰

No new development alters the Commission's analysis. Several C-Block licensees have been unable to pay for their bids. But in response to these repayment problems, the Commission eliminated its installment payment plan, which may have contributed to excessive bidding in the original PCS C- and F-Block auction. Since then, the Commission has successfully re-auctioned C- and F-Block licenses, for reasonable sums, to licensees who have paid for their licenses in full. Many of these licensees are

⁵ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Report and Order*, PP Docket No. 93-253 (1994). The Commission recognizes that auctions erect barriers to participation by designated entities by raising the cost of entry into spectrum-based services. *Id.*, paragraph 9.

⁶ Congress seeks to diversify the telecommunications marketplace and discourage concentration of licenses among a few companies. See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Report and Order*, PP Docket No. 93-253 (1994). Congress believes that disseminating licenses among various applicants, including small businesses, minority-owned businesses, and women-owned businesses, will increase competition for telecommunications services. *Id.*

⁷ *Id.*, paragraph 96.

⁸ *Id.*, paragraph 12.

⁹ Chairman Kennard expects the licenses formerly held by NextWave Personal Telecommunications, Inc. to sell for as high as \$10 billion. See *Communications Daily*, February 14, 2000, vol. 20, number 29.

¹⁰ See *Installment Payment Financing for Personal Communications Services (PCS) Licenses, Order on Reconsideration of the Second Report and Order*, WT Docket No. 97-82 (1988). See also, *Installment Payment Financing for Personal Communications Services (PCS) Licenses, Second Report and Order*, WT Docket No. 97-82 (1987); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Memorandum Opinion and Order*, PP Docket No. 93-253 (1994).

providing service, and many more will begin to in the coming months. The Commission's C-Block policies are beginning to bear fruit, as even SBC concedes.¹¹

This is no time to abandon the Commission's C-Block eligibility restrictions, for any market. To do so would eliminate the chance that any additional designated entities will enter the PCS marketplace, and would seriously damage those designated entities that are currently licensed on this spectrum.

No matter how the Commission slices it, no small business will be able to obtain any PCS license in any market valued by large companies, if the Commission relaxes its eligibility standards for C- and F-Block licenses. This is true for all markets. Permitting large businesses to bid for C- and F-Block licenses in the most populous markets will assure that only large businesses will obtain these licenses, if they want them. Permitting large businesses to obtain control of designated entity applicants for all other markets will assure that only large business-controlled entities will obtain these licenses, if they want them.

The Commission should retain its designated entity restrictions, without reservation, for the upcoming C- and F-Block re-auction. Only through diversity will competition come to PCS. The Commission should ignore the avarice of the telecom giants, ignore the allure of enormous bids, and stay its present course. Only then will the nation achieve Congress's goal of diversity and competition in telecommunications services.

Respectfully submitted,

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R. Bradley Koerner
Assistant Chief Counsel for Telecommunications

cc: Chairman Kennard
Commissioner Ness
Commissioner Furchtgott-Roth
Commissioner Powell
Commissioner Tristani
Kathleen O'Brien Ham

¹¹ See *Petition of SBC Communications Inc. for Waiver of the Eligibility Requirements of 47 C.F.R. § 24.709 for the PCS Frequency Blocks C and F Auction to Begin on July 26, 2000*, DC 00-191, dated January 21, 2000.

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